

REMARKS

The Applicants have studied the Final Office Action mailed October 31, 2008 and have made amendments to claim 3, 10, and 16. By virtue of this Response, claims 3-7, 10-14 and 16-20 are pending. It is submitted that the application is in condition for allowance. Reconsideration and allowance of the pending claims in view of the amendments and following remarks are respectfully requested. In the Office Action the Examiner:

In the Office Action, the Examiner:

- rejected claims 3-7, 10-14 and 16-20 under 35 U.S.C. § 112, first paragraph;
- rejected claims 3-7, 10-14 and 16-20 under 35 U.S.C. § 112, second paragraph;
- rejected claims 3, 6, 7, 10, 13, 14, 16, 19, and 20 are under 35 U.S.C. §103(a) as being unpatentable over Henson, US 6,167,383 in view of Ratliff et al., US 2003/0191725 A1, and further in view of Stack, US 6,076,070; and
- rejected claims 4, 5, 11, 12, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Henson, US 6,167,383 in view of Ratliff et al., US 2003/0191725 A1, in view of Stack, US 6,076,070, and further in view of Maritzen et al., US 2002/0052797 A1.

Rejection of Claims Under 35 U.S.C. §112

(A) As noted above, the Examiner rejected claims 3-7, 10-14 and 16-20 under 35 U.S.C. § 112, first paragraph. In particular, the Examiner states "Claims 3, 10 and 16 recite the limitation of "the user buyer selecting a purchase request widget at the first website." While the specification does refer to the website displaying a "proceed to checkout" button for "continuing the process of purchasing the computer that was selected in the web page," (page 13), the specification does not discuss a purchase request widget. For purposes of this action only, the examiner will interpret a widget to be a button or other indicator allowing the user to direct the server to perform some action."

Applicants respectfully point that the Pre-Grant Publication No. 2005/0044000, at paragraph [0047], states that the "user 102 then has the option of purchasing the configuration of the product and/or service online, or while connected to the web site 104". FIG. 3 of the Pre-Grant

Publication No. 2005/0044000 shows a “proceed to checkout” button (e.g., a widget) for continuing the process of purchasing the computer that has been selected. Therefore, the specification as originally filed does in fact include support for the presently claimed “the user buyer selecting a purchase request widget at the first website”. For example, by selecting the “proceed to checkout” button 352, the user is requesting to purchase the computer.

It should be noted that the terms “widget” and “purchase request” were used as known in the art and were *ipsis verbis* (not in the identical words) in the specification. The Examiner is respectively reminded that this was sufficiently described in the specification at FIG. 3 and paragraphs [0040] and [0047] as originally filed albeit not in the identical words.¹

More recently, the Federal Circuit in *Allvoice Computing PLC v. Nuance Communications, Inc.* (October 12, 2007) concluded that the reference to DDE in the specification is a structure corresponding to the “output means” clause of claim 60. With that understanding of the proper parameters of the claim, the record shows that an artisan of ordinary skill would understand the bounds of the claim when read in light of the specification. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. ----, 127 S.Ct. 1727, 1742 (2007) (“A person of ordinary skill is also a person of ordinary creativity, not an automaton.”). Thus, the record shows that claim 60 satisfies the definiteness requirement.”

Accordingly, Appellants submit that the above rejection of claims 3-7, 10-14, and 16-20 under 35 U.S.C. §112, first paragraph, has been overcome and should be withdrawn.

(B) The Examiner also rejected claims 3-7, 10-14, and 16-20 under 35 U.S.C. §112, second paragraph, stating that claims 3, 6, and 10 recite “calculating a second selling price based on

¹ If, on the other hand, the specification contains a description of the claimed invention, albeit not in *ipsis verbis* (in the identical words), then the examiner or Board, in order to meet the burden of proof, must provide reasons why one of ordinary skill in the art would not consider the description sufficient. See *In re Alton* (Fed. Cir 1996) (Emphasis Added). See also *Fujikawa v. Wattanasin* (Fed. Cir. 1996), *ipsis verbis*, “as the Board recognized, however, *ipsis verbis* disclosure is not necessary to satisfy the written description requirement of section 112. Instead, the disclosure need only reasonably convey to persons skilled in the art that the inventor had possession of the subject matter in question. *In re Edwards*, 568 F.2d 1349, 135152, 196 USPQ 465, 467 (CCPA 1978). See MPEP 2163 subsection II 3 (a), second to last paragraph.

calculating a second purchase price according to a competitor's prices by setting 'the purchase price' in response to whether the competitor price is higher or lower than other prices". The Examiner is unsure as to whether the purchase price is referred to in the calculations is the first or second purchase price.

Applicants have amended claims 2, 10, and 16 to more clearly recite:

[...]

in response to the competitor's price being higher than a highest price that a market will bear, set the second purchase price to the highest price that the market will bear;

in response to the competitor's price being: i) lower than the highest price that the market will bear and ii) higher than a lowest profitable price at the first web site, set the second purchase at the competitor's price;

in response to the competitor's price being lower than the lowest profitable price at the first web site, set the second purchase price at the lowest profitable price; and

presenting, by the first website, the second selling price associated with the order calculated based on the second purchase price associated with each of the configurable hardware and/or software components that have been selected by the user buyer, wherein the second purchase price associated with each of the configurable hardware and/or software components has been calculated based on the competitor's price.

Accordingly, Appellants submit that the above rejection of claims 3-7, 10-14, and 16-20 under 35 U.S.C. § 112, second paragraph, has been overcome and should be withdrawn.

Rejection of Claims Under 35 U.S.C. §103(a)

(C) As noted above, the Examiner rejected claims 3, 6, 7, 10, 13, 14, 16, 19, and 20 under 35 U.S.C. §103(a) as being unpatentable over Henson, US 6,167,383 in view of Ratliff et al., US 2003/0191725 A1, and further in view of Stack, US 6,076,070.

The Examiner correctly states that Henson does not teach or suggest "instructing, by the first web site in response to receiving the order, at least one web-crawler to query at least a second website for retrieving at least one competitor's pricing information for the plurality of configurable hardware and/or software components that have been selected by the user buyer,

wherein the web-crawler retrieves the at least one competitor's pricing information after the order has been received from the buyer; reading, by the first website, the at least one competitor's pricing information collected from at least second web site for the plurality of configurable hardware and/or software components that have been selected by the user buyer in the order received directly from the buyer; calculating by the first website, a second selling price for the product and/or service configured according to the plurality of configurable hardware and/or software components that have been selected by the user buyer based on calculating a second purchase price for each of the configurable hardware and/or software components that have been selected by the user buyer according to a competitor's price associated with the at least one competitor's pricing information as follows: in response to competitor's price being higher than a highest price that a market will bear, set the purchase price to the highest price that the market will bear, ...and presenting, by the first website, a second selling price associated with the order calculated based on a second purchase price associated with each of the configurable hardware and/or software components that have been selected by the user buyer, wherein the second purchase price associated with each of the configurable hardware and/or software components has been calculated based on the competitor's price".

The Examiner goes on to combine Henson with Ratliff stating that this combination teaches the above claim elements.

The Examiner states that Ratliff teaches "The website then instructs, in response to receiving the order, at least one web-crawler to query at least a second website for retrieving at least one competitor's pricing information for the product, wherein the web-crawler retrieves the at least one competitor's pricing information after the order has been received from the buyer ([0186 and 0189])". However, paragraphs [0186] and [0189] merely show that itinerary fares can be re-priced based on pricing rules and third-party Internet fares. A user has not submitted an order with a request to purchase the itinerary fare to be re-priced. Ratliff explicitly teaches that a user submits query terms to locate a product/service. Prior to the product/services being returned to the user, the pricing information is modified accordingly. See Ratliff at, for example, paragraphs [0037] and [0147]-[0152]. Therefore, Ratliff does not teach instructing, by the first website, at

least one web-crawler to query at least a second website for retrieving at least one competitor's pricing information in response to receiving an order which comprises a request to purchase.

Furthermore, the Examiner states that Ratliff teaches "instruct[ing], in response to receiving the order, at least one web-crawler to query at least a second website for retrieving at least one competitor's pricing information for the product". However, the claims actually recite "for retrieving at least one competitor's pricing information for the plurality of configurable hardware and/or software components that have been selected by the user buyer". In other words, the presently claimed invention is not just finding a competitor's pricing information for the product as a whole, as the Examiner is asserting, but is identifying each configurable component that makes up the product and is obtaining competitor's pricing information for each of these configurable components. Nowhere does Ratliff teach or suggest this.

Accordingly, the presently claimed invention distinguishes over Henson and Ratliff alone and/or in combination with each other for at least these reasons.

Independent claims 10 and 16 recite similar limitations as independent claim 1. Applicants believe that independent claims 10 and 16 of the present invention distinguish over Henson, Ratliff, and Stack individually and/or in combination with each other for at the reasons stated above as well.

For the foregoing reasons, independent claims 3, 10, and 16 distinguish over Ratliff. Claims 6-7, 10, 13-14, and 19-20 depend from claims 3, 10, and 16, respectively, since dependent claims contain all the limitations of the independent claims, claims 6-7, 10, 13-14, and 19-20 distinguish over Henson, Ratliff, and Stack individually and/or in combination with each other as well, and the Examiner's rejection should be withdrawn.

(D) As noted above, the Examiner rejected claims 4, 5, 11, 12, 17 and 18 under 35 U.S.C. 103(a) as being unpatentable over Henson, US 6,167,383 in view of Ratliff et al., US 2003/0191725 A1, in view of Stack, US 6,076,070, and further in view of Maritzen et al., US 2002/0052797 A1.

The Examiner goes on to combine Henson and Ratliff with Stack stating that ...“Stack teaches a method and system for an on-line price comparison and price reductions whereby once a vendor receives competitor prices, second selling prices for items are calculated based on the competitor prices and vendor thresholds (col. 4, line 58 through col. 5, line 4). The first web site then presents the second selling price to the user buyer (col. 5, lines 7-15).”

However, Stack at col. 4, lines 58 to col. 5, line 4 merely states “If the competitor's price is available, in step 240 the method checks to see if all competitor's prices were received (if multiple price requests were transmitted). If a competitor has not responded, in step 245 an error message for that competitor is displayed. In step 250, the competitor's prices are displayed to the customer by means of a new or revised display screen. In step 255 the competitor's price is compared to the item price of the vendor. If the item price is currently lower than the competitor's price, then there is no need to perform price reduction and the method is terminated. Else, in step 260, the competitor's price is compared to a predetermined threshold. The threshold level is set by the vendor.”

Col. 5, lines 5-17 of Stack merely states “If the competitor's price is below the threshold, the method proceeds to step 265, where a message is displayed reading “go buy it at” and also displaying the competitor's name. If the competitor's price is not below the threshold, then the method proceeds to step 270, where the customer is asked if he or she wants to see a reduced price (see FIG. 4). If the customer selects a price reduction, then the method proceeds to step 275, otherwise the method terminates. The amount by which the item price may be lowered is set by the vendor. In step 275 the new price is displayed to the customer, and in step 280 the percentage of savings is also displayed.”

Nowhere does Stack teach or suggest “presenting, by the first website, a second selling price associated with the order calculated based on a second purchase price associated with each of the configurable hardware and/or software components that have been selected by the user buyer, wherein the second purchase price associated with each of the configurable hardware and/or software components has been calculated based on the competitor's price”.

Stack allows a user to initiate a price comparison and/or price reduction sequence prior to purchasing the product. Nowhere does Stack teach or suggest that a second selling price associated with an order is calculated. The user in Stack has not ordered a product at a first selling price. Ratliff also does not teach an order as recited for the presently claimed invention for the reasons stated above. Stack merely teaches that a user requests competitor pricing info on items and never teaches that an item can comprise of a plurality of configurable products/services each associated with its own purchase price. Therefore, Stack does not teach or suggest that a second selling price of an item ordered at a first selling price is calculated based on a second purchase price associated with each of the configurable hardware and/or software components selected by the user that has been calculated based on the competitor's price is presented

Accordingly, the Examiner has failed to make a *prima facie* of obviousness and the rejection of the claims under 35 U.S.C. §103(a) should be withdrawn for at least the reasons stated above.

Applicants believe that the amended independent claims 3, 10, and 16 of the present invention should be allowed for at least the reasons previously stated hereinabove. Claims 4, 5, 11, 12, 17, and 18 depend from claims 3, 10, and 16 respectively. Since dependent claims contain all the limitations of the independent claims, claims 4, 5, 11, 12, 17, and 18 distinguish over Henson, Ratliff, Stack, and Maritzen, alone and/or in combination with each other as well, and the Examiner's rejection should be withdrawn.

CONCLUSION

In this Response, Applicants have amended certain claims. In light of the Office Action, Applicants believe these amendments serve a useful clarification purpose, and are desirable for clarification purposes, independent of patentability. Accordingly, Applicants respectfully submit that the claim amendments do not limit the range of any permissible equivalents.

Applicants acknowledge the continuing duty of candor and good faith to disclosure of information known to be material to the examination of this application. In accordance with 37

CFR § 1.56, all such information is dutifully made of record. The foreseeable equivalents of any territory surrendered by amendment is limited to the territory taught by the information of record. No other territory afforded by the doctrine of equivalents is knowingly surrendered and everything else is unforeseeable at the time of this amendment by the Applicants and their attorneys.

Applicants respectfully submit that all of the grounds for rejection stated in the Examiner's Office Action have been overcome, and that all claims in the application are allowable. No new matter has been added. It is believed that the application is now in condition for allowance, which allowance is respectfully requested.

The Commissioner is hereby authorized to charge any fees that may be required or credit any overpayment to Deposit Account 50-0510.

PLEASE CALL the undersigned attorney at (561) 989-9811 should the Examiner believe a telephone interview would help advance prosecution of the application.

Respectfully submitted,

Date: January 29, 2009

By: /Jon Gibbons/
Jon A. Gibbons, Reg. No. 37,333
Attorney for Applicants

FLEIT, GIBBONS,
GUTMAN, BONGINI, & BIANCO P.L.
551 N.W. 77th Street, Suite 111
Boca Raton, FL 33487
Tel (561) 989-9811
Fax (561) 989-9812